

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as circulated 11/27/17

Board/Committee:		CHARTER REVIEW COMMISSION		Meeting Date		October 23, 2017		
Location		Mo’ikeha Building, Meeting Room 2 A/B			Start of Meeting: 4:00 p.m.		End of Meeting: 4:47 p.m.	
Present		Chair Jan TenBruggencate; Vice Chair Ricky Watanabe; Members: Virginia Kapali, Carol Suzawa, and Isaac Cockett Also: Deputy County Attorney Adam Roversi; Boards & Commissions Office Staff: Administrative Assistant Lani Agoot; Administrator Paula M. Morikami						
Excused		Galen Nakamura						
Absent								
SUBJECT		DISCUSSION				ACTION		
		Prior to the start of the meeting, Administrative Assistant Eddie Topenio gave the Oath of Office to new Commissioner Carol Suzawa.						
Call To Order		Chair TenBruggencate noted that Marissa Sandblom, appointed to the Commission by the Mayor and awaiting Council confirmation, was in attendance, however would not participate in the meeting.				Mr. TenBruggencate called the meeting to order at 4:00 p.m. with 5 Commissioners present.		
Approval of Minutes		<u>Meeting Minutes of September 25, 2017</u>				Ms. Kapali moved to approve the minutes as circulated. Mr. Cockett seconded the motion. Motion carried 5:0.		
Business		<u>CRC 2017-03 Proposed Charter Amendment to Remove Article IX Relating to the Public Defender</u> Chair TenBruggencate noted that Article IX was no longer appropriate in the Charter because there is a State provision in the Hawai‘i Revised Statutes that says the State handles public defender duties. Chair TenBruggencate asked if there were any members of the public that wished to testify to which there were none. Vice Chair Watanabe shared his support of the proposed amendment. Chair TenBruggencate briefed the Commission on the process of proposed amendments. Ms. Suzawa asked where the proposed amendment came from to which Mr. TenBruggencate clarified that the Office of Boards and						

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	<p>Commissions provided him with several proposed Charter amendments relating to measures in the Charter that are no longer relevant.</p>	<p>Ms. Kapali moved to refer proposed Charter amendment relating to the removal of the Public Defender to the County Attorney for review. Mr. Cockett seconded the motion. Motion carried 5:0.</p>
	<p><u>CRC 2017-04 Proposed Charter Amendment to Remove Article XXX Relating to the Electric Power Authority</u></p> <p>Chair TenBruggencate recused himself due to a conflict of interest and turned the meeting over to Vice Chair Watanabe.</p> <p>Vice Chair Watanabe stated that KIUC (Kaua‘i Island Utility Cooperative) was established shortly after Article XXX was voted into the Charter, which deemed Article XXX irrelevant.</p> <p>Vice Chair Watanabe turned the meeting over to Chair TenBruggencate.</p>	<p>Ms. Kapali moved to refer proposed Charter amendment relating to the removal of the Electric Power Authority to the County Attorney for review. Mr. Cockett seconded the motion. Motion carried 4:0.</p>
	<p><u>CRC 2017-05 Proposed Charter Amendment to Remove the Zoning Board of Appeals (Article XIV, Subsection 14.12 - 14.14)</u></p> <p>Chair TenBruggencate stated that the Zoning Board of Appeals was proposed to the Charter Review Commission by the Planning Director and was passed by the electorate in 2016. County Attorney Mauna Kea Trask was asked to brief the Commission on the proposed amendment.</p> <p>Mr. Trask stated that the Planning Department and the Planning Commission have three (3) main concerns: time consuming due process</p>	

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	<p>hearings, hearings officer expense, and burdening the Planning Commission as well as applicants and the public, due to the length of meetings. The decision was made to follow the City and County of Honolulu and create a Zoning Board of Appeals. Mr. Trask said that the Office of Boards and Commissions has been unable to find volunteers to serve on the Board due to the time requirement and technical nature of the Board. He said there would be a tremendous amount of due process and members would be required to make difficult decisions that could potentially affect people's lives. Mr. Trask shared that currently, there are fourteen (14) contested cases before the Planning Commission for various types of TVR or Bed and Breakfast Use Permit applications. One case in particular was assigned to a hearings officer in June of 2015. There were approximately six (6) pre-hearing conferences; the hearings on the merits of the case began in March of 2016 and then there were five (5) additional hearings. An issue came up via motion which delayed the hearing on the merits of the case and that motion is currently before the Planning Commission. Mr. Trask said he didn't see how the time issue could be resolved because a hearings officer, who is a licensed attorney and knows how to deal with these cases, has taken almost three (3) years and over six (6) hearings on this particular contested case. He said he also didn't think a board of volunteers would be able to deal with contested cases by meeting only twice a month and felt it would require at least eight (8) hours a day, two (2) weeks a month.</p> <p>Mr. Trask stated that the City and County of Honolulu has a fundamentally different zoning process from Kaua'i. On Kaua'i, the Planning Director receives permit applications and makes decisions. If the applicant disagrees with his decision, they appeal to the Planning Commission; the Planning Commission goes through the hearing process and makes a decision. If the applicant still disagrees, they can take the matter to court. In the City and County of Honolulu, certain permits are decided by the Planning Director</p>	

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	<p>while other permits are decided by the City Council. Those permits include Interim Planned Development Transit Permits, Planned Development Resort Permits and apartments in Waikiki, Planned Development Use Permits, Special Management Area Use Permits, and Zone Change Permits. Mr. Trask summarized by saying that although it is helpful to see how other counties work within the State, it was likely a false analogy to try to follow the City and County of Honolulu. He said from a legal and technical perspective, he didn't think the Zoning Board of Appeals would ever come to fruition due to the fact that it would be difficult to effectuate. He stated that he was not against due process and does not want to go against the voters, however, there were real problems with the Zoning Board of Appeals and it should probably be removed from the Charter.</p> <p>Ms. Suzawa asked for clarification regarding the current process for contested case hearings to which Mr. Trask provided that the Planning Director makes a determination and, should the applicant disagree with his decision, they are entitled to appeal his decision to the Planning Commission. If the appeal is relatively basic, the Planning Commission would handle the contested case. If it is more complicated, a hearings officer would be procured to conduct the hearing; write a proposed Findings of Fact, Conclusions of Law, and Decision and Order; and send it back to the Planning Commission for final decision-making.</p> <p>Ms. Suzawa asked if anyone has asked why the Zoning Board of Appeals has not been implemented to which Mr. Trask explained that the Office of Boards and Commissions has been trying to fill the Board but has been unsuccessful for reasons stated earlier, specifically time requirements and the technical nature of contested cases. Ms. Suzawa commented that it may be hard to remove the amendment because it was just voted on in the previous election.</p>	

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	<p>Chair TenBruggencate asked for public testimony.</p> <p>Ms. Felicia Cowden stated that she was in support of the removal of the Zoning Board of Appeals, and pointed out for the record that the original amendment that created the Zoning Board of Appeals was not citizen-initiated; it was initiated by the Charter Review Commission with very little testimony from the public. She said there were no pros and cons provided, and it was evident that it was just pushing the worst of the worst of the Planning Commission's responsibility onto a new board. Ms. Cowden said this could have been anticipated and testimony could have been heard regarding how difficult it would be, and was disappointed when the amendment passed. She said it was all the reasons that the Charter Review Commission made it difficult in the last group, to have citizens not able to propose their own ballot initiatives. She added that she hoped this could be fixed without having to wait two (2) years.</p> <p>Chair TenBruggencate clarified that the Charter amendment regarding the Zoning Board of Appeals did not originate in the Charter Review Commission. It was a proposal brought to the Commission by the Planning Department.</p> <p>Administrator Paula Morikami shared that she provided the Commission with a letter from Planning Director Michael Dahilig that addresses the fact it was very difficult to fill the Zoning Board of Appeals and that other options needed to be looked at regarding the handling of contested case hearings. Ms. Morikami said she met with Mr. Dahilig and Mr. Trask to discuss her difficulties in trying to fill the Board's positions and was told that the Board meetings would take sixteen (16) to twenty (20) hours a week. She stated that she has been unable to find willing candidates to fill</p>	

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	<p>the Board.</p> <p>Mr. Trask addressed an issue that came up at the last County Council meeting regarding the publication of Charter amendments, saying that under Section 24.03(b) regarding the process for amending, the Charter states; <i>"Summaries of any new charter or amendment shall be published in a newspaper of general circulation within the county and the entire text published by electronic or online publication on the official website of the County of Kaua'i not more than 30 days after its adoption."</i> He said there has been some criticism that "pros" and "cons" on Charter amendments weren't provided in the publication of Charter amendments and that not enough information was provided to the public. Mr. Trask stated that the Charter calls for "summaries", and believes it is inherently subjective and may prejudice the record.</p> <p>Chair TenBruggencate suggested that the Commission defer the item to the next meeting and invite the Planning Director to provide further clarification.</p>	<p>Mr. Watanabe moved to defer CRC 2017-05, relating to the removal of the Zoning Board of Appeals to the next meeting agenda. Ms. Suzawa seconded the motion. Motion carried 5:0.</p>
	<p><u>CRC 2017-06 Proposed Charter Amendment to Amend Article XIII Relating to the Department of Public Works, Sections 13.01 - 13.03 by Changing the Title from County Engineer to Director of Public Works, and Changing Job Description to Reflect Title Change</u></p> <p>Human Resources Director Janine Rapozo stated that the last County Engineer was Larry Dill who left the County on February 15, 2016. At that time, Human Resources tried to attract people to apply for the position; they received two (2) applications, one qualified and one did not. Currently, Lyle Tabata is the Deputy County Engineer acting as the County Engineer</p>	

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	<p>and he does not have a Professional Engineer's License. Ms. Rapozo said that historically, Human Resources have had problems filling the position, as well as Civil Engineer positions that require a license, and have been on recruitment for over ten (10) years. Ms. Rapozo stated that the Administration is considering removing the requirement for a Professional Engineer's License for the County Engineer and is looking for someone with leadership and managerial experience versus technical experience. The Department of Public Works has three (3) divisions that have licensed engineers; Waste Water, Engineering, and the Buildings Division. Ms. Rapozo added that in reaching out to other counties, the Big Island is in a similar situation where they have been unable to fill their County Engineer position.</p> <p>Mr. Watanabe asked how the change would affect the responsibility and salary of the County Engineer to which Ms. Rapozo replied that the only change would be that the County Engineer would no longer sign plans that require a PE's (Professional Engineer) signature. Other positions within the Division responsible for signing those types of documents could be reclassified and have that responsibility added to their job description. Ms. Rapozo stated for the record that all professional engineers on staff have higher salaries than the current County Engineer's maximum salary. Mr. Watanabe inquired if the County paid for the licensing or re-licensing requirements to which Ms. Rapozo said yes, if it was a job requirement. Mr. Watanabe asked if the title changed, would the Director of Public Works' salary be less than the County Engineer to which Ms. Rapozo clarified that their salaries are set by the Salary Commission, and that would be something they would need to consider.</p> <p>Ms. Kapali commented that she agreed with Ms. Rapozo's assessment of the</p>	

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	<p>position as far as having a strong administrator because of the massive responsibility of the County Engineer. She said through her years of experience with the County, it was difficult to attract, recruit, and retain people for the County Engineer position because the private market was paying more than the County.</p> <p>Mr. Cockett asked if the position title changed to a managerial/administrative position, knowing that licensed engineers exist within the system, would that increase the County's liability. He added that if the County Engineer position were to be changed and focused on managerial and administrative skills, he would be in support of the change as long as there were adequate people supporting the County Engineer with the technical aspects. Ms. Rapozo stated that with regard to County liability, the Charter defines what responsibilities require a license as far as signing documents.</p> <p>Chair TenBruggencate said, with regard to salary, Public Works is one of the biggest departments in the County and he wasn't sure he would recommend that the Salary Commission make any downward adjustment because it is a big job. He said the fact that the department head has subordinates that have higher salaries, the position may be underpaid. Chair TenBruggencate suggested inviting former County Engineer Larry Dill to the next meeting for further information.</p> <p>Mr. Watanabe commented that in the past four (4) months, the Department of Parks and Recreation took over the maintenance staff from the Department of Public Works, and didn't think they gained employees or funds to help handle the transition to which Ms. Rapozo said he was correct. Mr. Cockett asked Ms. Rapozo about the difficulties of filling the County Engineer position to which she replied that there were a combination of</p>	

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	<p>reasons, including security in a civil service position versus an appointed position, licensed engineers are a hot commodity, the pay in the private sector is generally higher, and the heavy responsibilities of the County Engineer position.</p> <p>Chair TenBruggencate asked for public testimony to which there was none, and asked for a motion to defer.</p> <p>Chair TenBruggencate invited Ms. Rapozo to attend the next meeting.</p>	<p>Mr. Watanabe moved to defer CRC 2017-06 to the next meeting agenda and invite Larry Dill. Ms. Suzawa seconded the motion. Motion carried 5:0.</p>
	<p><u>CRC 2017-07 Proposed Charter Amendment to Remove Article XXXII Relating to the County Auditor</u></p> <p>Mr. Trask briefed the Commission on the history of the County Auditor position. Chair TenBruggencate suggested that because the County Council employs the County Auditor, they should be consulted on this matter, adding that the position has been vacant for some time. Mr. Trask said that he was aware that the County Council could not fill the position because of the salary and the skill set is not on the island. He added that audits do take place every year per the Charter.</p> <p>Mr. Watanabe stated that since 2009, the County has spent 7.2 million dollars on the new amended auditor system for nineteen (19) audits; eight (8) of those audits were already being conducted by the County Clerk's office. He clarified that the position has been vacant for approximately three (3) years. Ms. Suzawa suggested getting input from the County Council and Chair TenBruggencate agreed to invite them to the next meeting.</p>	

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	<p>Chair TenBruggencate asked for public testimony.</p> <p>Ms. Cowden said she appreciated what Mr. Watanabe shared and agreed that a profound amount of money was spent. She recommended that the matter be deferred to consult with the County Council, as well as the public, adding that she routinely hears people questioning the integrity of one branch of government or the other. Ms. Cowden said she appreciated that the County Clerk's office effectively performs audits and that it was important to bring that to the public in a very clear way. She added that although she never met Ernie Pasion, she has heard his name many times, and people that he subcontracted were profoundly opinionated on what they feel they saw.</p> <p>Mr. Watanabe clarified that the County Clerk's office oversaw the comprehensive audits before the amended version of the Charter.</p> <p>Chair TenBruggencate asked for a motion.</p> <p>Ms. Suzawa asked to go back to CRC 2017-05 regarding the removal of the Zoning Board of Appeals, saying that the Planning Director and the Planning Department was using another process in reviewing the appeals. She suggested new language for the process they are using versus removal of the Zoning Board of Appeals. Chair TenBruggencate said he hoped they could have a conversation with the Planning Director regarding other options to solve the problem.</p>	<p>Mr. Watanabe moved to defer CRC 2017-07 to the next meeting agenda and invite members of the County Council. Ms. Kapali seconded the motion. Motion carried 5:0.</p>

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	<p>Mr. Watanabe stated that he was going to work with the Office of Boards and Commissions regarding the Mayor's supplemental budget and the necessity for having a public hearing on the day the budget is passed. Chair TenBruggencate advised Mr. Watanabe to provide his proposed amendment to the Office of Boards and Commissions or to him within two (2) weeks to be placed on the next agenda. Ms. Kapali stated that she wanted to revisit the idea of four-year Council terms.</p> <p>Ms. Cowden was allowed time to address the Commission, saying that she had an issue with the transparency of the Charter Review Commission. She said the importance of the Commission was equal to the Constitution for the State or the Federal Government. She stated that with a quorum of five (5), it only took three (3) people to make a decision to which Ms. Morikami provided that it was a total of seven (7) members on the Commission and required four (4) votes for a motion to pass. Ms. Cowden said the level of public outreach is very weak and you have to go to the County website six (6) days before a meeting to read the agenda and minutes. She stated that the Charter Review Commission was almost behind closed doors, and pointed out that she was the only member of the public at the meeting and had to bring her camera to feel confident that she would be treated with respect. Ms. Cowden clarified that she was referring to past Commission members. She said it was hurdle after hurdle, and where it might take a year for the County Council to pass something, it only takes three (3) meetings at the Charter Review Commission. Ms. Cowden stated that there has been multiple times that she wanted to submit proposals as a citizen but there hasn't been room, adding that there was no agenda item that allowed for public testimony. Ms. Cowden stated that this was an end-run around democracy. She said when the Charter Review Commission was created by Bryan Baptiste, it was intended to be similar to the General Plan Update where the public was involved, not closed with hand-picked Commission</p>	

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	<p>members. Ms. Cowden stated that the Charter Review Commission dealt with critical issues and it was disappointing that there was so little input from the public, and that their input was not wanted or welcome.</p> <p>Mr. Watanabe addressed Ms. Cowden saying that the next meeting was on November 27th to which Ms. Cowden replied that she knew when the meeting was, however, the agenda and minutes were not published. She said she has applied to the Charter Review Commission many times because she wanted to be a voice to the public but had never received a response. Ms. Cowden added that she brought someone to a meeting who didn't know what the Charter was and he was invited to be a member of the Commission at the meeting by Chair TenBruggencate. Ms. Cowden stated that the Commission was an inside group and not something that was open. Mr. Trask stated for the record that he knew Ms. Cowden; respected her, appreciated her mana'o, and that anyone who cared enough in a democracy to participate should be applauded. He provided that all boards and commissions meet the requisite legal requirements for meeting notices, and didn't think it was an accurate statement that there was anything unethical taking place or that there was a deliberate conspiracy to dis-inform the people of Kaua'i. Mr. Trask clarified for the record that in his professional capacity as a public official, he did not think the Charter Review Commission was an inside group or that there was anything inappropriate going on. He cautioned the Commission that if there was something inappropriate taking place, he advised them to stop, and that if he was aware of inappropriate behavior, he would be ethically obligated to ensure that it stopped. Corrective action would be taken, including the removal of anyone from a board, commission, or office; elected or appointed. Mr. Trask thanked Ms. Cowden for attending and recording the meeting, saying that unfortunately the County cannot afford to record all board and commission meetings. He said ultimately, the responsibility in any democracy and what</p>	

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	<p>made it a good form of government was the people, and that they need to show up and get the work done. Mr. Trask stated again for the record that to his knowledge, nothing inappropriate was taking place on the Charter Review Commission, and thanked the Commissioners for their service.</p> <p>Chair TenBruggencate stated that the Charter Review Commission was the very exercise of democracy rather than an end run around democracy. He clarified that Bryan Baptiste did not establish the previous Charter Review Commission; the people of Kaua‘i did. They voted in an election and the majority voted to establish a ten-year Charter Review Commission. Commissioners are nominated by the Mayor, who is elected by the people, and confirmed by the County Council, whose members are elected by the people and serve at the will of the people. Chair TenBruggencate said there have been suggestions that decisions are made by less than a quorum and stated that does not happen, clarifying that decisions require four (4) votes - a majority of the full appointed Commission, regardless of the number of members present. He added that the Commission meets at regularly noticed public locations. Chair TenBruggencate said he has, on multiple occasions, invited members of the public to testify, stating that transparency would continue through his term as Chair and through the term of anyone elected as Chair of the Charter Review Commission moving forward.</p>	
Announcements	<u>Next Meeting: Monday, November 27, 2017, 4:00 p.m., in the Mo‘ikeha Building, Meeting Room 2A/2B</u>	
Adjournment		Mr. Watanabe moved to adjourn the meeting at 5:22 p.m. Ms. Suzawa seconded the motion. Motion carried 5:0.

Submitted by: _____
Lani Agoot, Administrative Specialist

Reviewed and Approved by: _____
Jan TenBruggencate, Chair

- () Approved as circulated.
- () Approved with amendments. See minutes of _____ meeting.